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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000479-MR

MARTINA COLLINS — APPELLANT

v.

APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 05-CI-00253

APPELLEE

PAINTSVILLE HOSPITAL COMPANY, INC.,
d/b/a PAUL B. HALL REGIONAL MEDICAL CENTER

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; TAYLOR, JUDGE; GUIDUGLI,[1] SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Martina Collins appeals the dismissal of her complaint for failure to state a claim for the tort of outrage and the grant of summary judgment against her on claims of wrongful termination and breach of contract. We affirm.

Collins was employed by the Paintsville Hospital Company since 1990. The Hospital entered into a collective bargaining agreement with the United Steel

[1] Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Workers of America in March 2003. Pursuant to its rights under the agreement, the Hospital created standard personnel policies regarding absenteeism. Collins learned that her daughter was expecting her first child in July 2004. As early as February 4, 2004, Collins requested six vacation days including July 1, 5, 6, 10, and 11. The Hospital approved the vacation time for the tenth and eleventh, but denied vacation time for the first, fifth, and sixth. After the denial, Collins requested unpaid personal leave for the three days in question. This request was also denied. The reason stated for the denial was that another employee with seniority on the same floor had already scheduled time off on those days. Collins stated that she would not report to work on the days that had been denied. The Hospital warned Collins that three consecutive unexcused absences would constitute a "critical offense" that would result in termination. Collins did not report to work on July 1, 5, and 6. The Hospital then terminated her employment. After exhausting administrative remedies, Collins filed an action in the Johnson Circuit Court for the tort of outrage, wrongful termination and breach of contract. The trial court dismissed Collins's complaint for the tort of outrage for failure to state a claim. The court also granted summary judgment in favor of the Hospital on the wrongful termination and breach of contract claims. This appeal followed.

Collins first argues that the trial court erred by dismissing her claim for the tort of outrage. A trial court should only grant a motion to dismiss if "it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Benningfield v. Petit Environmental, Inc.,* 183 S.W.3d 567, 570

(Ky.App. 2005). In considering the motion of the Hospital, the truth of the allegations in the complaint is assumed and the pleadings are to be liberally construed in the light most favorable to the plaintiff. *Id.* This determination requires no factual findings and is purely a question of law. *Id.*

In order to recover for the tort of outrage, the plaintiff must demonstrate: "(1) the wrongdoer's conduct was intentional or reckless, (2) the wrongdoer's conduct was outrageous and intolerable, (3) there is a causal connection between the conduct and the emotional distress, and (4) the emotional distress suffered is severe." *Id.* at 572. Collins alleges that her termination from employment caused her severe emotional distress. However, mere termination does not rise to the level of outrageousness that is required to support a claim. *Id.* Even when reviewed in the light most favorable to Collins, we cannot conclude that the circumstances surrounding her termination were so extreme and outrageous as to support her claim.

Collins next argues that the trial court erred by granting summary judgment in favor on the Hospital on the issues of breach of contract and wrongful termination. She argues that the Hospital violated the collective bargaining agreement by unreasonably denying her requests for leave and terminating her employment without just cause.

In Kentucky, employment is generally terminable at will. *Id.* at 570. Therefore, "[a]n employer may discharge his at-will employee for good cause, for no cause, or for a cause that some might view as morally indefensible." *Id. (*quoting *Firestone Textile Co. v. Meadows,* 666 S.W.2d 730, 731 (Ky. 1984)). However, "an

employee may file a wrongful discharge claim if he or she was terminated in violation of a well-defined public policy. But, this exception only applies when the statute creating the public policy exception does not provide a structure for pursuing a claim." *Id.*

In *Bridges v. F.H. McGraw & Co.,* 302 S.W.2d 109, 112 (Ky. 1957), the former Court of Appeals discussed the effect of collective bargaining agreements as follows:

> ...[a] collective bargaining agreement establishes in a general way reciprocal rights and responsibilities of the employer, the employees collectively and the union. The agreement 'establishes no concrete contract between the employer and any employee, but is only an agreement as to terms on which contracts of employment may be satisfactorily made and carried out.' It is contemplated that those terms are to be incorporated in separate contracts of hire with each employee. When one accepts employment under the collective agreement, he thereby ratifies and accepts its terms, and his rights and his employer's rights are to be measured and adjudged by that contract.

(internal citations omitted.) As stated above, a collective bargaining agreement does not create an employment contract between employer and employee. Collins has not demonstrated any proof of a contract between the Hospital and herself outside of the collective bargaining agreement. Therefore, there was no contract to breach and summary judgment was proper on that claim.

Collins next argues that she was wrongfully terminated in contravention of the bargaining agreement because the Hospital unreasonably denied her request for leave

and terminated her employment without cause. The interpretation of contracts is a matter of law. *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003)

The bargaining agreement requires the Hospital to discharge employees for "just cause." The agreement also empowers the Hospital to establish standard personnel policies regarding absenteeism. Regarding vacation time, the agreement states "[v]acation time is scheduled by the Supervisor or Department Head at the convenience of the Hospital. While every effort will be made to give employees the vacation period of their preference, vacations must be scheduled for a time that will least interfere with the quality of patient care and the operation of the department." Employees with seniority are given preference in the event of a conflict in requested vacation days. The employee handbook states that three consecutive unexcused absences constitute a critical offense that will result in termination. In this case, the Hospital granted Collins part of her requested vacation time. The reason for the denial of the other days was that another employee with seniority on the same floor had already scheduled vacation days. The personal days Collins requested were also denied for the same reason. Collins was warned that three consecutive unexcused absences were grounds for dismissal. We cannot conclude that Collins's employment was terminated without just cause. The trial court did not err in granting summary judgment.

Accordingly, the judgment of the Johnson Circuit Court is affirmed.

ALL CONCUR.

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